

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division**

JASON KESSLER, et al.,

Plaintiffs,

V.

CITY OF CHARLOTTESVILLE,

Defendant.

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Case No. 3:17-cv-00056-GEC

AFFIDAVIT OF CITY MANAGER MAURICE JONES

STATE OF VIRGINIA

CITY OF CHARLOTTESVILLE, to wit:

This day in the City of Charlottesville, Virginia, Maurice Jones appeared before me, Barbara K. Ronan, a Notary Public in and for the City and State aforesaid, and made oath as follows:

1. I am the City Manager for the City of Charlottesville and as such serve as the Director of Public Safety and Emergency Management for the City. I have served in that capacity for six years. I have also served as Assistant City Manager for the City of Charlottesville and have a total of fifteen years of experience working in local government.

2. On May 30, 2017, Mr. Jason Kessler applied for a permit to hold a demonstration on August 12, 2017 in Emancipation Park (formerly known as "Lee Park", and identified as "Lee Park" in Mr. Kessler's application) ("Application Request"), a true and accurate copy of which is attached hereto.

3. Mr. Kessler submitted the Application Request by filing a City Special Event Application Form, which was received by the City's Special Events Coordinator Michelle

3. Mr. Kessler submitted the Application Request by filing a City Special Event Application Form, which was received by the City's Special Events Coordinator Michelle Christian, an employee of the City's Department of Parks and Recreation, on May 30, 2017. The Application Request included the following pertinent details:

a. Mr. Kessler described the proposed event as a "free speech rally in support of the Lee monument" (hereinafter, the "Rally").

b. The Rally was to be held between the hours of 12 p.m. and 5 p.m. on August 12, 2017.

c. The estimated number of Rally participants was 400 people.

d. The Application Request affirmatively stated that the Rally would not include or require any of the following: (1) street closings; (2) time prior or subsequent to the Rally for set up or breakdown; (3) amplified music; or (4) the use of City utilities, City equipment, or other City services.

4. In accordance with standard practices for review of special event application requests, Ms. Christian forwarded the Application Request to representatives of several City departments. The Application Request was circulated among the following City departments: Parks and Recreation, Public Service Division, Public Works Traffic Division, Transit Division, Neighborhood Development Services, the Fire Department, and the Police Department. The Director of Parks and Recreation forwarded the Application Request to me and the Department of Communications on May 31, 2017. The response to Mr. Kessler's Application Request was in accordance with the City's Standard Operating Procedure for review and approval of requests for demonstrations or special events.

5. As Director of Public Safety and Emergency Management for the City of Charlottesville, I started working with both City officials and the event organizer to prepare for a safe and

peaceful demonstration on August 12, 2017. As this planning developed, it became clear that there would be significant public safety challenges associated with the Rally. It also became clear that the original Application Request did not reflect the actual number of attendees, the requirements as to street closures, or the necessary City resources required to hold a safe event in Emancipation Park.

6. Emancipation Park is located in the historic downtown area of the City of Charlottesville. The Park comprises 1.04 acres, and is approximately one square block in size and shape. The Park includes all of the land bounded by the following narrow streets: Jefferson Street, First Street N.E., Market Street, and Second Street N.E.

7. I was advised by the Charlottesville Police Department, public safety personnel and City planning staff of the following logistical and safety concerns associated with holding the proposed Rally in Emancipation Park:

- a. Although the permit application states that the demonstration will consist of approximately 400 people, on or about 1000 to 2000 individuals are likely to attend as demonstrators.
- b. Because Emancipation Park is a relatively confined space of just over one acre in a densely populated urban area without parking spaces, this Park is unable to accommodate safely a crowd of a thousand people at any one time.
- c. Emancipation Park has been the site for events where the anticipated visitors to a festival or community event are fluid over a period of time. However, city staff report that the confined space of Emancipation Park and the absence of parking or public facilities make it extremely difficult to safely accommodate a large concentration of demonstrators all at one time.

d. The City's law enforcement, fire and emergency medical services personnel cannot adequately protect people and property in and around Emancipation Park due to the number of anticipated attendees trying to occupy one square block for five hours.

e. The presence of such a large demonstration in Emancipation Park would require the closing of a section of East Market Street, leading to massive traffic congestion and shutting down a principal means of ingress and egress, for the duration of the 5 hour rally.

8. The City Engineer has indicated that the full closure of Market Street would have a significant impact on traffic, especially if Market Street would have to be closed for several blocks and for the duration of the demonstration. Neighborhood Development Services has raised all of the following concerns associated with such a street closure:

a. The complete closing of a two-way street requires the direction of all traffic that would normally utilize that route to alternate or parallel routes, which create traffic congestion and delays (among other issues) on those other routes. Most side streets, and especially those in the Charlottesville's historic downtown area, do not have the requisite turnaround area required for an intersection with a closed street, and may also have to be closed. The closure of Market Street would further require the closure of the mall crossings.

b. The afore-described effects of the road closures required to hold the Rally in Emancipation Park would necessarily limit the access of emergency vehicles to the Rally, and would severely hinder the ability of emergency vehicles to operate in the area surrounding Emancipation Park.

c. Beyond the movement of traffic, full closure of Market Street would create a significant impact on parking. Market Street accommodates a substantial amount of public parking in both the east and west bound directions. The full closure of Market Street would significantly reduce parking opportunities in the downtown area, creating a greater demand on surrounding streets. This would exacerbate the parking limitations of the area for both Rally attendees and the general public, and would generally limit access of the public to the Charlottesville's downtown area.

d. The need for traffic control on a full closure of Market Street requires placement of significant signage in advance of the event to notify drivers of the closure and to advise them of alternate routes. Barricades, channeling devices and/or similar mechanisms are also needed on either end of the closure, at each access point along the closure, including side streets. The implementation of such measures becomes increasingly difficult and burdensome as the expected size of the Rally grows.

e. Neighborhood Development Services further noted the likelihood of a significant impact on businesses and other destinations in the downtown area resulting from the above-described concerns regarding navigation and parking in the area surrounding the Rally.

9. The Charlottesville Police Department reported to me that based on the cumulative body of intelligence collected by CPD, the City should expect no fewer than 1,000 Rally participants in Emancipation Park. The intelligence available suggests that some Rally participants intend to carry firearms. The CPD indicated that the confined space in Emancipation Park and the absence of parking and access routes made Emancipation Park an unsafe location to hold a Rally with more than 1,000 participants concentrated in one City block all at the same time. The Police

Chief indicated that the changing circumstances of this rally posed an unacceptable risk to attendees, participants, the general public, law enforcement and emergency personnel.

10. The Fire Chief expressed concerns that Emancipation Park's limited size and limited access points make it difficult for emergency personnel to safely respond to calls for service with 1,000 participants in the Park. The closure of several public roads to accommodate the large number of participants will cause potentially severe delays in response times to both event and non-event related emergency incidents, and will substantially hinder the ability of public safety personnel to provide emergency services to both Rally participants and to the general public. The one acre available in Emancipation Park does not provide adequate areas for staging emergency personnel in advance.

11. The City worked with Mr. Kessler when he asked to modify his Application Request on July 18 and July 20 (first to bring in bathroom facilities and on July 20 to use amplified music). Mr. Kessler never made a request until the week of the Rally to modify the number of attendees at the Rally despite his active marketing on social media. I was concerned about the dramatic increase in projected Rally participants reported to me by the CPD. The City's information deviated significantly from the Application Request of 400 attendees.

12. I met with Mr. Kessler on Monday, August 7th at 11:00 a.m. The Special Events Coordinator Michelle Christian and Captain Wendy Lewis from Charlottesville Police were present. Mr. Kessler stated that the crowd was going to be more than the 400 indicated on the Application request. He asked if it was possible to change the crowd size in his application six days before the event. Mr. Kessler did not believe that demonstrators would reach the reported size of 1,000 to 2,000 suggested in the media, but he did not clearly articulate a basis for this conclusion. The CPD told him about their intelligence on this issue and Mr. Kessler said that he

was tracking 500 individuals on his Facebook. Captain Lewis told him that the Facebook site now totaled 600 reported attendees. Mr. Kessler never provided details on his “internal system” for calculating attendance and his plans for keeping track of the demonstrators registering to attend. He did not believe his direct supports would be over 500 participants.

13. On August 7, 2017, Kessler acknowledged that groups separate from his organization planned to attend the rally. He expressed general concerns about crowd size and asked the City to help him restrict access to other groups attending the rally. Mr. Kessler was unable to suggest how his “plan” could be effectively administered by the City. His own statements indicated he anticipated attendees in larger numbers than in his application. This meeting helped me determine that the permit location needed to be modified to protect the safety of the demonstrators, city residents, and the first responders present to keep the peace and assist in emergencies.

14. In consultation with the Charlottesville Police Department and public safety personnel, McIntire Park was identified as a viable alternative venue for the Rally. In contrast with Emancipation Park, McIntire Park has ample space to handle a large demonstration. McIntire Park encompasses approximately 130 acres, and the surrounding area has the lowest population density of any section within the City limits. McIntire Park also provides ample free off-street parking and sufficient routes for ingress and egress for Rally participants, emergency vehicles, and other attendees. I granted the Application Request as to the date and time for the rally and requested that the rally location be moved to a more appropriate park for the anticipated crowd.

15. In confronting what appeared to be a potential public safety crisis in the historic downtown and the inevitable shutdown of primary streets causing significant congestion, I made a limited amendment to the Application Request. I believe it is a reasonable request to move the

location of the Rally to another public park where Police are better able to protect everyone's safety and to protect property. My motivation behind the approval of McIntire Park over Emancipation Park was based on my belief that the emergency management and first responders needed the remaining six days to plan for the event in a safer and more feasible location.

16. The City has direct experience to justify a forum change due to the public safety risks, concerns over protection of property and the significant congestion in the downtown area. The City has never seen a rally of the size projected for August 12, 2017. However, recent experience from the KKK Rally in the historic downtown helps me evaluate the public safety challenges of this much larger rally. About 44 participants attended the KKK demonstration. This 44 person rally required significant City resources to provide a safe environment for the demonstrators. Kessler's Rally will be over 20 times larger. Experience tells me that this will be too much for Emancipation Park to accommodate. My limited modification as to the place for this Rally has absolutely nothing to do with the content of the speech or the anticipated reactions of counter-demonstrators. The City's public safety professionals have reported to me that McIntire is a safer place to have this Rally and that Emancipation Park is not large enough to accommodate on or about 1000 demonstrators without unreasonable risks to people and property. This is not a speculative conclusion. It is based on the Police Department's collected intelligence and the City's recent experience.

17. The City is not trying to infringe on Mr. Kessler, or any of the demonstrators, rights to free speech. McIntire Park provides an ample alternative location for this free speech rally in a space that is able to safely accommodate over 1,000 rally participants convening on one location at the same time.

Maurice Jones
Maurice Jones, City Manager
City of Charlottesville

Subscribed and sworn to before me this 10th day of August, 2017. In testimony whereof, I have hereunto set my hand the day, month and year aforesaid.

Barbara K. Ronan
Notary Public

Registration No.: 188151 My commission expires: 4/30/2021

